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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 BOB G. THUT, et al.,

11 Plaintiffs,

12 v.

13 CITY OF SEATTLE, et al.,

14 Defendants.

CASE NO. C05-1464C

ORDER

15 This matter has come before the Court on Defendants' motion to dismiss several of Plaintiffs'
16 claims as time barred. (Dkt. No. 19.) Having carefully considered the papers filed by the parties, the
17 Court has determined that no oral argument shall be necessary. For the reasons that follow, the motion is
18 hereby GRANTED in part and DENIED in part.

19 Defendants' motion seeks to dismiss the following claims: (1) violations for 42 U.S.C. § 1983
20 against the City and the Officers; (2) false arrest and imprisonment against the Officers; and (3) assault
21 and battery against the Officers.

22 The parties agree that the incident providing the basis for this action was the alleged arrest and
23 detention of Plaintiffs on June 4, 2002. Plaintiffs filed notices of claims for damages with the City on
24 May 9, 2005.

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1 The Washington state statute of limitations governing personal injury actions applies to claims
2 brought under 42 U.S.C. § 1983. *See Wilson v. Garcia*, 471 U.S. 261, 276-79 (1985) (holding that
3 § 1983 claims are best characterized as personal injury claims for statute of limitations purposes and that
4 the state statute of limitations governing personal injury claims was the appropriate statute to apply to
5 § 1983 claims brought by a plaintiff alleging unlawful arrest and assault by a state police officer). The
6 Ninth Circuit, in *Rose v. Rinaldi*, 654 F.2d 546, 547 (9th Cir. 1981), held that the applicable Washington
7 statute is Wash. Rev. Code (“RCW”) § 4.16.080. *See also Bagley v. CMC Real Estate Corp.*, 923 F.2d
8 758, 760 (9th Cir. 1991), *cert. denied*, 502 U.S. 1091 (1992). RCW § 4.16.080 provides a three-year
9 statute of limitations. Thus, to have been timely and absent some tolling statute, Plaintiffs’ § 1983 claims
10 would have had to have been brought by June 4, 2005.

11 Plaintiffs contend that Washington’s claims-filing statute, RCW § 4.96.020(4), tolled the statute
12 of limitations for sixty days. Whether this argument has merit depends on whether the time provision in
13 this section is properly characterized as a tolling statute or as a special statute of limitations. *See Silva v.*
14 *Crain*, 169 F.3d 608, 610 (9th Cir. 1999) (stating that state notice of claim statutes, including their special
15 statutes of limitations, are generally inapplicable to § 1983 actions, but recognizing that state tolling
16 statutes must be applied). The statute deemed by the *Silva* Court to be a special statute of limitations
17 (and thus inapplicable to a § 1983 action) provided for either a six-month or a two-year statute of
18 limitations. 169 F.3d at 610 (citing CAL. GOV’T CODE § 945.6(a)). However, in *Harding v. Galceran*,
19 the Ninth Circuit found that a statute providing that “[a]ny applicable statute of limitations . . . shall be
20 tolled” constituted a state tolling statute applicable to the general statute of limitations applicable to §
21 1983 actions. 889 F.2d 906, 908 (9th Cir. 1989) (citing CAL GOV’T CODE § 945.3).

22 Here, the applicable text of RCW § 4.96.020(4) provides, “The applicable period of limitations
23 within which an action must be commenced shall be tolled during the sixty-day period.” The express
24 language of this sentence is more like the statute in *Harding* than in *Silva*. In addition, even though this
25 “tolling” provision makes its appearance in a state notice of claims statute, like the special statutes of
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1 limitations in *Silva*, it is the fact that it is a *tolling* statute rather than the fact that it appears in a notice of
 2 claims statute that is important. In general, state notice of claims statutes have been disapproved of in the
 3 context of § 1983 claims because “the application of the notice requirement burdens the exercise of the
 4 federal right . . . [t]his burden . . . is inconsistent in both design and effect with the compensatory aims
 5 of the federal civil rights laws.” *Felder v. Casey*, 487 U.S. 131, 141 (1988). In a similar vein of
 6 reasoning, the Ninth Circuit in *Harding* found that the portion of CAL GOV’T CODE § 945.3 barring a
 7 party from bringing a civil action against a peace officer while state criminal charges are pending against
 8 that party was contrary to the purposes of § 1983. 889 F.2d at 908. However, the *Harding* Court found
 9 that the tolling portion of the statute was consistent with the purposes of § 1983 and should therefore
 10 have been applied to the plaintiff’s claims. Thus, under *Harding*, the tolling portion of RCW
 11 § 4.96.020(4) is properly considered separate from the notice of claims portion.¹

12 Accordingly, the Court finds that RCW § 4.96.020(4) tolled the statute of limitations on
 13 Plaintiffs’ § 1983 claims for sixty days. As Plaintiffs filed their complaint on July 13, 2005, the Court
 14 finds that Plaintiffs’ § 1983 claims were timely brought. Therefore, Defendants’ motion to dismiss
 15 Plaintiffs’ § 1983 claims as time barred is DENIED.

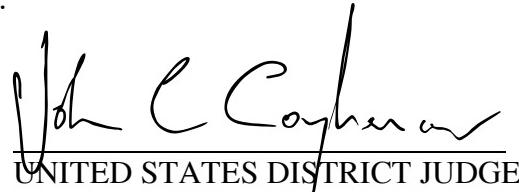
16 As to Plaintiffs’ claims regarding false arrest, false imprisonment, assault and battery, Plaintiffs
 17 argue that the applicable statute of limitations is found in RCW § 4.16.080, which applies to actions
 18 against “a sheriff, coroner, or constable.” However, Plaintiffs’ claims are not asserted against sheriffs,
 19 coroners, or constables, but police officers. Therefore, the two-year statute of limitations in RCW
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21 ¹Defendants cite to a case from the Second Circuit in which the court found that because the state
 22 notice of claim requirement did not apply to the federal action, “no valid purpose would be served by
 23 enlarging the prescribed period to ‘compensate’ for a disability that did not exist.” *Day v. Moscow*, 955
 24 F.2d 807, 814 (2d Cir. 1992). However, in *Harding*, the Ninth Circuit applied the tolling provision of
 25 CAL GOV’T CODE § 945.3 *even after* it found that the first part barring a party from bringing a civil action
 against a peace officer while state criminal charges were pending against that party did not apply (and
 thus did not constitute a “disability”). Thus, the particular direction taken by the Ninth Circuit on this
 question requires that a tolling provision be considered on its own.

1 § 4.16.100(1) applies to Plaintiffs' claims for false arrest, false imprisonment, assault and battery. *See*
2 *also, Boyles v. City of Kennewick*, 813 P.2d 178, 179 (Wash. Ct. App. 1991) (applying two-year statute
3 of limitations to claims against police officer for assault and battery); *Heckart v. City of Yakima*, 708 P.2d
4 407 (Wash. Ct. App. 1985) (applying two-year statute of limitations to claims against police officer for
5 false arrest). Defendants' motion is GRANTED as to Plaintiffs' claims regarding false arrest, false
6 imprisonment, assault, and battery.

7 In accordance with the foregoing, Defendants' motion is GRANTED in part and DENIED in part.
8 Plaintiffs' claims of false arrest, false imprisonment, assault, and battery are hereby DISMISSED with
9 prejudice.

10 SO ORDERED this 8th day of March, 2006.

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13 UNITED STATES DISTRICT JUDGE
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